

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

ALTAGRACIA PEGUERO,

Plaintiff,

v.

AMERICAN EXPRESS COMPANY,  
INC., THE SKLOVER GROUP, INC.

Defendant,

Civil Action No. 05-10995-RCL

AMERICAN EXPRESS COMPANY,  
INC.,

Cross-Claim Plaintiff,

v.

FEDERAL INSURANCE COMPANY and  
THE SKLOVER GROUP INC.,

Cross-Claim Defendants.

**DEFENDANT FEDERAL INSURANCE COMPANY'S  
MOTION TO DISMISS THE CROSS-CLAIM FOR  
CONTRIBUTION ASSERTED BY AMERICAN EXPRESS  
(Oral Argument Requested)**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Federal Insurance Company ("Federal") moves to dismiss the cross-claim for contribution asserted by American Express on the ground that Federal has entered into a good faith settlement with plaintiff Altagracia Peguero, extinguishing the contribution cross-claim under Massachusetts General Laws c. 231B, § 4(b). As such, American Express has failed to state a claim for contribution upon which this Court may grant relief, and the cross-claim should be dismissed.

In support of this motion, Federal submits a memorandum of law and the Affirmation of Danielle M. Aguirre with accompanying exhibits.

**REQUEST FOR ORAL ARGUMENT**

Pursuant to Local Rule 7.1(D), Federal Insurance Company respectfully requests oral argument on this motion.

By its attorneys,

/s/ Mark Corner

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*Attorneys for Defendant Federal Insurance Company*

**CERTIFICATION PURSUANT TO LOCAL RULE 7.1(A)**

Mark W. Corner, counsel of record for the Defendant Federal Insurance Company, hereby certifies that on November 16, 2005, Danielle Aguirre of the law firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP, co-counsel to Federal Insurance Company, conferred by telephone with John F. Farraher, counsel to American Express, in an effort in good faith to resolve or narrow the issue presented in this motion, as required by Local Rule 7.1(A)(1), and that the parties were unable to resolve the issues raised in this motion.

**SIGNED UNDER THE PENALTIES OF PERJURY THIS 17th DAY OF  
NOVEMBER 2005.**

/s/ Mark Corner

**CERTIFICATE OF SERVICE**

I, Mark W. Corner hereby certify that on this date, November 17, 2005, I caused to be served the foregoing document, along with the accompanying Memorandum of Law, by electronic notice, upon the following counsel of record:

Kevin Donius, Esquire  
Corcoran, FitzGerald & Hennessey  
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Allison M. O'Neil, Esquire  
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/s/ Mark Corner  
Mark W. Corner

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Danielle M. Aguirre, an attorney duly admitted to practice law in the State of New York and admitted by this Court *pro hac vice* in the above-captioned action, affirms:

1. I am an attorney associated with law firm of Paul, Weiss, Rifkind, Wharton and Garrison LLP, counsel to Federal Insurance Company ("Federal").
2. I am admitted *pro hac vice* by this Court in the above-captioned action.
3. On August 16, 2005, Federal and plaintiff Altagracia Peguero entered in good faith into a Settlement and Release Agreement (the "Settlement Agreement"). This Settlement Agreement contains a Confidentiality provision. For this reason, this Settlement Agreement is not submitted in support of Federal's Motion to Dismiss. Federal will produce the Settlement Agreement to this Court for in camera review of the terms and conditions of the Agreement if this Court so requests.

Dated: New York, New York  
November 17, 2005

/s/ Danielle M. Aguirre

Danielle M. Aguirre